No. 2436.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

TIMOTHY HEALY for and on behalf of RHAGAT SINGH et al. and SUNDAR or SANDU SINGH et al.,

Appellant,

vs.

SAMUEL W. BACKUS as Commissioner of Immigration at the Port of San Francisco, for the United States Government,

Appellee.

REPLY BRIEF OF APPELLEE

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REPLY BRIEF OF APPELLEE.

This case involves petitions of twenty-two alien Hindoos for a writ of *habeas corpus.* It appears from the immigration records and their testimony that they originally came from India and that some of them were employed for a period in China before going to the Philippine Islands. On entering the island territory of the United States they were given certificates of admission by the officials who supervise immigration under the Department of War in that territory. They all remained in the Philippine Islands for periods varying from several weeks to several months when they took passage for San Fran-

cisco. At this port they were duly arrested upon warrants issued by the Secretary of Labor at Washington, D. C., and charged with being aliens unlawfully in the United States in that they were persons likely to become public charges. After many hearings before the Immigration Department during several months' time they were finally ordered deported by the Secretary of Labor. These departmental warrants dated October 10th, 1913, under which these aliens have been ordered deported, set forth that the aliens have been given hearings and that they have been found in the United States in violation of the Immigration Act "for the following, among other reasons, that " the said aliens are members of the excluded classes " in that they were likely to become public charges " at the time of their entry into the United States". Their joint petitions for writs of *habeas corpus* to the District Court were denied. (209 Fed. 700.) From the order denying the petition the appellants bring the case to this court.

The charges set forth in these warrants are based upon sections 2, 20 and 21 of the Act of February 20th, 1907. That portion of section 2 applying to this case reads as follows:

> "That the following classes of aliens shall be excluded from admission into the United States * * * persons likely to become a public charge."

The portion of section 20 which interprets and incorporates section 2 reads as follows:

> "That any alien who shall enter the United

States in violation of law * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported to the country whence he came at any time within three years after date of his entry into the United States."

That portion of section 21 which applies to these cases reads:

"That in case the Secretary of Labor shall be satisfied that an alien has been found in the United States *in violation of this Act,* or that an alien is subject to deportation under the provisions of this Act *or any law of the United States,* he shall cause such alien within the period of three years after landing or entry therein, to be taken into custody and returned to the country whence he came. * * *"

The procedure followed in these cases finds its basis in rule 14 of the immigration rules of the Department of Labor, which reads as follows:

"RULE 14. ALIENS REACHING CONTINENTAL PORTS VIA PORTO RICO, HAWAII, OR THE PHILIPPINES.

"Subdivision 1. EXAMINATION AT INSULAR PORTS. Aliens arriving in Porto Rico, Hawaii, or the Philippines, bound for the continent, shall be inspected and given a certificate signed by the immigration officer in charge at San Juan or Honolulu, or the insular collector of customs at Manila, showing fact and date of landing.

"Subd 2. CERTIFICATES FOR ALIEN INSULAR RESIDENTS. Aliens who, having been manifested *bona fide* to Porto Rico, Hawaii, or the Philippines, and having resided there for a time, signify to the immigration officer in charge at San Juan or Honolulu, or the insular collector of customs at Manila, an intention to go to the continent, shall be furnished such certificate, as evidence of their entry at an insular port.

"Subd. 3. ADMISSION AT CONTINENTAL PORTS OF ALIENS PRESENTING CERTIFICATES. Aliens applying at continental ports and surrendering the certificate above described shall, upon identification (and payment of head-tax, if from Porto Rico or Hawaii), be permitted to land, provided it appears that at the time such aliens were admitted to Porto Rico, Hawaii, or the Philippines they were not members of the excluded classes or likely to become public charges if they proceeded thence to the mainland.

"Subd. 4. ARREST AND DEPORTATION. If such aliens fail to present the certificate, it shall be presumed that they were not examined when entering Porto Rico, Hawaii, or the Philippines, and they shall be arrested in accordance with rule 22 on the ground of entry without inspection and such other grounds, if any, as may be found to exist. *If it is found in accordance with subdivision 3 hereof that such aliens were at the time of entry to Porto Rico, Hawaii, or the Philippines members of the excluded classes or likely to become public charges if they proceeded thence to the mainland, they shall be arrested in accordance with rule 22 on either or both of these grounds.*"

This rule is based upon the fact that the standard of living in the Philippine Islands is so different to the standard of living in the mainland of the United States, that people who might be admitted in the Philippines would be deemed likely to become public charges should they go to the mainland and is for the purpose of preventing aliens from using the Philippine Islands as a stepping stone to admission into the United States.

The rule is really superfluous, for even though aliens may be admitted directly into the United States,

they are in reality only admitted and allowed to enter on probation, and are subject to the right and power of the Secretary of Labor to arrest and expel them if subsequently he becomes satisfied that their presence in the country is contrary to law, or that they are likely to become public charges.

II.

Term "Likely to Become a Public Charge" Defined.

Aliens likely to become public charges are named in section 2 along with the other classes of the insane, the criminal and various others, as being excludable from the United States, and sections 20 and 21 of the Act are shown to incorporate section 2. Those likely to become public charges are not in any way distinguished from the insane, the criminal or the other classes, and the term "likely to become a public charge" has been interpreted to mean not that a person must be a public charge at the time of entry, or likely to become a public charge immediately thereafter, but if there is any possibility that the alien is *ever likely* to become a public charge—if in one year, or in twenty years—he may be excluded from the United States.

There are two interpretations that may be put upon the term "likely to become a public charge", namely, a narrow, restricted interpretation, and a broad and reasonable interpretation.

The narrow meaning of the term would signify that the person was likely to become an object of charity, to receive bounty from the City, County or State, or

might be maintained in a home or asylum provided by the community.

In the broad sense, the term might mean a person who would be a nuisance to a community, who might commit depredations and be a frequent burden, or he might be a person who would be subject to arrest, or one who would be continually under the surveillance of the law. If a person is a nuisance, a burden or a tax on any locality, he is in the broad sense a public charge. In the case of

United States vs. *Williams,* 175 Fed. 274,

it is shown that such a broad construction of the term "likely to become a public charge" can, and must be used.

III.

Affidavits Set Forth in the Records.

In the records in the cases of these twenty-two aliens there are on file a number of affidavits. Those on behalf of the aliens were filed by their attorneys to substantiate the contention that each one of the twenty-two aliens could secure employment in this state and that his labor was desired. The immigration authorities then filed affidavits in rebuttal of the statements made in the affidavits filed on behalf of the aliens, showing that these twenty-two aliens were not desired in the fields of employment which they expected to enter. These affidavits in the records are a mere circumstance showing the condition of affairs in the fields of labor in this country,

and the affidavits filed by the government were not used against the aliens in deciding as to their likelihood of securing employment in the country, but merely in refutation of the extravagant statements made in the affidavits filed on behalf of the aliens.

There is no attempt on the part of the government to rule against these aliens as a class, or because of their coming from a particular country, but the affidavits merely show the limited field of labor for aliens of the class to which these twenty-two belong, or any other aliens of whatsoever nationality, who might come in under similar circumstances.

IV.

Issues Raised by Petitions and Returns.

The brief of the attorneys for the aliens may be subdivided into three general divisions or issues:

A. The Fairness of the Hearings.

B. The Evidence Presented.

C. The Interpretation of the Immigation Laws in the Expulsion of Aliens.

The fairness of the hearings involves the matters of procedure. It deals with the question of whether or not the aliens were advised of their right of counsel and whether they were given the assistance of counsel and also the further question of whether the hearings were entirely regular.

The discussion of the evidence presented has reference to the question whether or not there was some evidence, how such evidence was treated, and was there

an abuse of discretion in making the rulings and decisions upon the evidence presented?

The interpretation of the immigration laws concerns the application of such laws to the *expulsion* of aliens once landed on American soil. It further renders it necessary to determine whether or not certain sections of the immigration laws, particularly sections 2, 20 and 21, make a clear distinction between exclusion and expulsion of aliens likely to become public charges. Under this heading may also be discussed the question whether or not the promulgation of rule 14 was in excess of the authority conferred by section 22.

A.

The Fairness of the Hearings.

This phase or issue of the combined cases involves the matter of procedure or rather the adjective part of the case. Were all the proceedings regular? Were the aliens advised of their right of counsel? Did they avail themselves of counsel? Did counsel appear for them in their hearings before both the immigration officials and the Secretary of Labor? Was all the evidence offered by them accepted?

The questions can all be answered by a moment's perusal of the immigration records, which show that all matters of procedure were regular and open and entirely in conformity with rule 22-4 B of the immigration laws.

It is stated in the petitions that there was unfairness and irregularity in the reopening of the hearings

before the immigration authorities at Angel Island, after there had been some understanding that the cases were closed. This is denied by the returns of the respondent. It is shown in the returns that when the Commissioner of Immigration notified the attorneys for the aliens on the 25th of September, 1913, that the cases were still open for any additional evidence that they might care to submit, and that the government intended to put forth further evidence, there was no protest on the part of the said attorneys. In reply to this notification, Mr. John L. McNab, one of the attorneys for the aliens, sent the following letter:

"September 27, 1913.

"Hon. Samuel W. Backus,
"United States Commissioner,
"Angel Island, California.

"My dear Sir:

"This is in response to your letter No. 12824-18-1FHA, advising me that new evidence has been taken by the Government in the case of a group of Hindoos, and that we will now be permitted to inspect the same, and offer further evidence.

"I thank you for the courtesy of the information. Yours truly,

"JLM/KM JOHN L. MCNAB."

This letter shows conclusively that up to that time the attorneys for the aliens had no objection to the proceedings, and considered them entirely fair and regular.

There is a further assertion in the petitions for the writs of *habeas corpus* on behalf of the said aliens, to the effect that at their respective hearings they were

not advised of their right of counsel, nor did they have counsel present or witnesses heard in their behalf.

To show that the aliens were accorded every right given them under the rules and regulations of the immigration act we would cite rule 22-4B of the Immigration Rules, and the records show that the procedure in each case was followed according to the provisions of said rule. It is the contention of the government on behalf of the respondent that no unfairness or irregularity in any of the proceedings can be shown, that everything was open and above board, and that every opportunity was accorded the aliens and their attorneys to submit all the evidence they desired. The case of *Low Wah Suey* vs. *Backus,* 225 U. S. 468, 56 L. Ed. 1165, shows the attitude and interpretation of the Supreme Court of the United States on these rules and a reading of that case in conjunction with the immigration record on file herein will show conclusively that these twenty-two aliens were given "fair hearings".

It is alleged on page five of appellant's brief that the fact that the warrants of deportation did not correspond to the wording of the warrants of arrest of the aliens was a point of unfairness in their hearings before the immigration officials. As to the power to present charges against aliens unlawfully within the country, rule 22 of the Immigration Rules, subdivision 1, provides that:

> "Officers shall make thorough investigation of all cases where they are credibly informed or

> have reason to believe that a specified alien in the United States is subject to arrest and deportation on warrant. All such cases, by whomsoever discovered, shall be reported to the immigration officer stationed nearest the place where the alien is found to be."

And section 22 of the Immigration Act in defining the powers and duties of the Commissioner-General of Imimgration provides:

> "That the Commissioner-General of Immigration in addition to such duties as may by law be assigned to him, shall, under the direction of the Secretary of Labor, have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction and supervision of all officers, clerks and employees appointed thereunder."

In view of the foregoing principles of law and the statutory provisions of the Acts of Congress, it is obvious that the contention in appellant's brief, namely, the alleged illegality of the warrant of arrest, is absolutely without merit.

Were the aliens and their attorneys sufficiently apprised of what might be eventually incorporated in the decision of the Secretary of Labor?

The contention that arrested aliens must be formally advised in the warrant of arrest of each and every charge upon which a warrant of deportation is eventually based, has been raised in a number of cases, and decided favorably to the government. The case of

Ex parte Hamaguchi, 161 Fed. 185, at p. 192,

lays down the rule that the warrant of arrest need

not set forth specifically the charge upon which the warrant of deportation is finally based.

> "That petitioner was not specifically charged with being unlawfully within the country does not militate against the authority of the Commissioner-General to deport him, finding that he was in fact unlawfully therein. Nor has the petitioner been deprived of a hearing with reference to that charge. Neither was he misled to his injury by the actual charge preferred. The petitioner was represented by counsel, and all the facts were developed at the hearing, and came from witness' own mouth, warranting his deportation. *The summary proceeding provided by law does not require that technical regard for forms that is deemed essential in criminal proceedings,* and, having had a full hearing, whereat it was developed that he is unlawfully within the country, and the finding and recommendation of the inspector in charge being against him, I am not disposed to require that the procedure be gone through with again for the sake of stricter observance of form; the law having been observed in substance. It would be better in all such cases that the party be charged with being unlawfully within the country, specifying in what particulars the unlawfulness consists; but where a full and fair hearing has been had involving that charge, I think it would be extremely technical to hold that deportation should not follow until a further hearing be given."

The case of *United States* vs. *Williams,* 175 Fed. 274-6, is in accord with the foregoing opinion:

> "It is true that the warrant did not specify this ground of deportation; but the relator was advised at the outset of the hearing that the authorities meant to rely upon it as a ground of deportation and I find no requirement, either in

the act or in the promulgated regulations, that the warrant must state the alleged grounds."

The case of *United States ex rel. Rose* vs. *Williams,* 200 Fed. 538, at p. 541, also decides this point:

> "It is true upon these assumptions that the allegations in the order of arrest that the relator had then admitted his guilt were unfounded. But irregularities in the order of arrest do not affect the status of an alien held upon a warrant of deportation after a fair hearing. It is even held that the fact that a warrant of deportation is based in part upon a charge not stated in the warrant of arrest is not an objection when the alien has had a fair hearing on the charge. *Siniscalchi* v. *Thomas,* (C. C. A.), 195 Fed. 701, and cases cited."

The case of *Ekiu* vs. *United States,* 142 U. S. 651, at page 662 emphatically decides this point, and cites a number of authorities:

> "A writ of *habeas corpus* is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the government is shown, *he is not to be discharged for defects in the original arrest or commitment. Ex parte Bollman,* 8 U. S. 4, Cranch 75, 114, 125 (2:554, 567, 570); *Coleman* v. *Tennessee,* 97 U. S. 509, 519 (24:1118, 1123); *United States* v. *McBratney,* 104 U. S. 621, 624 (26: 869, 870); *Kelly* v. *Thomas,* 15 Cray, 192; *Rex* v. *Marks,* 3 East, 157; *Shuttleworth's Case,* 9 Q. B. 651."
>
> *Ex parte Garcia,* 205 Fed. 53;
>
> *The Japanese Immigrant Case,* 189 U. S. 187;

Low Wah Suey vs. *Backus,* 225 U. S. 460, 56 L. Ed. 1165;
Zakonite vs. *Wolf,* 226 U. S. 272, 57 L. Ed. 219.

On page 7 of appellant's brief it is alleged as a point of unfairness that certain *ex parte* affidavits were filed by the government without giving counsel for aliens an oppportunity to cross-examine the persons making the statements. The government contends that while many privileges are accorded to aliens in their immigration proceedings the privilege of cross-examining the affiants making affidavits is not granted to aliens by immigration rules and regulations. The case of *Hanges* vs. *Whitfield,* 209 Fed. 675, referred to by appellant is now on appeal. Without further comment appellee cites the following cases on the point of cross-examination:

Ex parte Pouliot, 196 Fed. 437;
Ex parte Cardonnell, 197 Fed. 774;
Siniscalchi vs. *Thomas,* 195 Fed. 701;
Ex parte Garcia, 205 Fed. 53;
The Japanese Immigrant Case, 189 U. S. 86, 100;
Low Wah Suey vs. *Backus,* 225 U. S. 460, 56 L. Ed. 1165.

Rule on the Question of Unfairness.

The long-established rule by the many court decisions is to the effect that if the hearings before the immigration officials have been regular and have followed the provisions of the Immigration Act, and no unfairness can be shown, the merits of the cases will not be entered into when such cases are presented to the courts. Where no irregularity can

be shown, it is the rule of the courts that the determination of executive officials in the course of their departmental duties shall be final and conclusive and the courts will not reopen a case to delve into its merits. Authorities for this rule may be cited as follows:

Bouve, Exclusion and Expulsion of Aliens in the United States, pp. 135, 137;
Ekiu vs. *U. S.,* 142 U. S. 651;
Fong Youe Ting vs. *U. S.,* 149 U. S. 698;
Lem Moon Sing vs. *U. S.,* 158 U. S. 538;
Tan Tung vs. *Edsell,* 223 U. S. 673;
Low Wah Suey vs. *Backus,* 225 U. S. 460;
Ex parte Moola Singh, 207 Fed. 708;
Chin Yow vs. *U. S.,* 208 U. S. 8;
Ju Toy vs. *U. S.,* 198 U. S. 253.

The Supreme Court in the California case, *Low Wah Suey* vs. *Backus,* 225 U. S. 460, discusses the question of unfairness and cites many authorities on that point. In his decision, Justice Day said:

> "A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings it must be shown that the proceedings were *manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation,* or that there was a manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final. *United States* v. *Ju Toy,* 198 U. S. 253, 49 L. Ed. 1040, 25 Sup. Ct. Rep. 644; *Chin Yow* v. *U. S.,* 208 U. S. 8, 52 L. Ed. 369, 28 Sup. Ct. Rep. 201; *Tang Tun* v. *Edsell,* 223 U. S. 673, *ante,* 606, 32 Sup. Ct. Rep. 359."

In the case of *Chin Yow* vs. *United States,* 208 U. S. 8, Justice Holmes has very emphatically given his opinion on the question of the fairness and regularity of an immigration hearing. He says:

> "If the petitioner was not *denied a fair opportunity to produce the evidence* that he desired, or a fair, though summary hearing, the case can proceed no farther. Those facts are the foundation of the jurisdiction of the District Court. If it has any jurisdiction at all, *it must not be supposed that the mere allegation of the facts opens the merits of the case* whether those facts are proved or not. * * * But unless and until it is proved to the satisfaction of the judge that a hearing properly so called, was denied, the merits of the case are not opened and we may add, *the denial of the hearing cannot be established by proving the decision was wrong.*"

The question of whether or not Justice Holmes in his opinion in the Chin Yow case is consistent with his former opinion in the case of *United States* vs. *Ju Toy, supra,* has been carefully analyzed and it is shown that they are in harmony. An emphatic interpretation of these two cases, and entirely agreeing with them, is the opinion in the case of *Ex parte Chin Hen Lock,* 174 Fed. 282, 286-7, in which the Court said:

> "It is not the province of the district judge *to try the facts* upon which a Chinese immigrant claims the right to enter the United States. Congress has provided that all these facts are to be heard by the appropriate immigration officer. * * * It has been held by the Supreme Court that a hearing by that tribunal is due process of

law. *United States* v. *Ju Toy,* 198 U. S. 253.
* * *

"Some of the judges of the Circuit Court of Appeals have stated that this decision has been somewhat modified by the Chin Yow case, 208 U. S. 8. * * * I do not so understand it. The Chin Yow case simply holds that where an applicant claiming to be an American citizen by birth has had no trial, or the hearing before the inspector gave the applicant no 'chance to establish his right' in the mode provided by the statutes, or his hearing was not conducted 'in good faith', however 'summary', it is the duty of the courts to take jurisdiction; otherwise not.
* * *

"The opinion in this case is entirely consistent with that in the Ju Toy case. * * * Applying the principle that the district judges are not to interfere with the conduct of the immigration officer or the Honorable Secretary of Commerce and Labor in the performance of their statutory duty, where they have given the applicant a fair hearing, *however they may have weighed and decided the facts,* if they have acted in good faith, the judges should keep their hands off."

In the following and numerous other cases the principle announced by the Supreme Court has been applied in slightly varying, but always broad, terms:

Ex parte Watchorn, (C. C., S. D. of N. Y.), 160 Fed. 1014, 1016.

"Doubtless the determination of the immigration authorities upon all questions of fact, *even if made upon legally incompetent or inconclusive evidence,* is final, but when the proceedings before them show indisputably that they are acting *without jurisdiction,* relief may be had by writ of *habeas corpus.*"

Ex parte Petterson, (C. C. D. of Minn.), 166 Fed. 536, 539.

"That a writ of *habeas corpus* may be properly granted when the evidence produced before such (immigration) official, and upon which he assumes to act is wholly *uncontradicted,* and shows *beyond any room for dispute or doubt* that the case in any view is beyond the statute. * * *"

In re Tang Tung, (C. C. A., 9th Cir.), 168 Fed. 488, 496. (See, also, 490-491.)

"That, after examining the record and finding that a *bona fide* hearing had been granted, 'under such circumstances we do not understand * * * that any court is authorized to review the action of the Department of Commerce and Labor in the matter of *admitting or weighing evidence, or to consider whether the conclusions drawn* by its officials were right or wrong."

Ex parte Long Lock, (D. C. N. D. of N. Y.), 173 Fed. 208, 215.

"This court can only examine the evidence to see (1) was a full and fair and unbiased hearing had? and (2) was the decision based on such a state of facts that a question of fact was presented for the decision of the inspector? or (3) *was the evidence conclusive as a matter of law,* so that the decision, affirmed by the Department of Commerce and Labor, was arbitrary and unwarranted?" (See, also, *Ex parte Lee Kow,* [C. C. N. D. of N. Y., same judge, 161 Fed. 593, 595].)

Davies vs. *Manolis,* (C. C. A., 7th Cir.), 179 Fed. 818, 821.

"In each instance the 'questions of fact are for the consideration and judgment of the department officials. * * * (See, also, p. 822.)

In re Jem Yuen, (C. C. D. of Mass.), 188 Fed. 350.

"It is well settled that officers of the government to whom the determination of questions of this kind are entrusted * * * are not bound * * * by rules of evidence applied in courts. * * * The alien's opportunity to be heard need not be upon any regular set occasion nor according to the forms of judicial procedure; it may be such as will secure the prompt, vigorous action contemplated by Congress and appropriate to the nature of the case."

While this cause was pending before Judge Dooling a similar case came up before District Judge Neterer of the Western District of Washington, in the matter of the detention of seventy-two alien Hindoos, entitled *Ex parte Moola Singh,* 207 Fed. 708. It is earnestly requested that this opinion be read with that of Judge Dooling. That portion of the opinion rendered by Judge Neterer which is directly in point, is as follows:

"The admission of aliens into the United States is regulated by Congress. The supervision is confided to the Department of Immigration charged with the enforcement of laws regulating the admission. The final determination of all of the facts with relation to the qualification of aliens to enter the United States or their deportation within the time limit fixed by Act of Congress for reasons therein given is entrusted to the proper immigration officers 'whose decision is final, unless reversed on appeal to the Secretary of Labor.' By the Act of Congress these officers are made the sole and exclusive judges of the existence of the facts establishing qualification, and no other tribunal is vested with

authority or power by Congress to re-examine and consider the sufficiency of the evidence on which these officers acted. So long as the officers clothed with this authority act within the limits placed by Congress, courts have no right to interfere. The authority of the immigration officers and the jurisdiction of the courts depend upon power conferred by Congress. It is a matter of legislation. No discretion is vested in the courts. Congress has the right to legislate upon the subject, prescribe rules and fix limits and confer authority where it deems wise in legislating upon the subject at hand. The supreme authority is conferred upon the immigration officers. The jurisdiction of the court is limited to ascertaining whether the petitioners were denied a hearing.

Ekiu vs. *United States,* 142 U. S. 650;
Yamataya vs. *Fisher,* 189 U. S. 86;
United States vs. *Ju Toy,* 198 U. S. 253;
Lee Moon Sing vs. *United States,* 158 U. S. 583;
Chin Yow vs. *United States,* 208 U. S. 8.

"An examination of the record which is presented upon this hearing establishes to my mind conclusively that a fair and full hearing was accorded to each and every one of the petitioners. They were represented by counsel and given every opportunity of presenting all facts bearing upon their qualification. A hearing having been accorded, the court is precluded from a re-examination of the issue presented, merely because it is contended that the conclusion of the immigration officers, based upon the testimony presented, was wrong.

Chin Yow vs. *United States, supra.*"

The facts in the cases decided by Judge Neterer are exactly similar to those in the cases at bar, the aliens having first landed in the Philippine Islands.

Attorneys McNab and Healy, representing the appellant, attempt on page 28 of their brief to cite a distinction in that the Hindus in *Ex parte Moola Singh, supra,* did not present certificates from the Philippine Islands upon their arrival in Seattle, Wash. That is a distinction without a difference, since the aliens claimed to have been duly admitted in the island territory, they were arraigned on warrants of arrest emanating from the Department of Labor, which is the procedure with aliens already in the United States, and were ordered expelled from the country by warrants of deportation just as in the case before this Court. To our knowledge no appeal has yet been perfected in that case.

B.

The Evidence Presented.

The rule and the precedent fixed by the authorities is to the effect that if a decision by the immigration authorities is not arbitrary and is substantiated by some evidence, such ruling of the immigration official will not be disturbed. The rule is, if there is some evidence—as one authority states, "even a scintilla of evidence"—the courts will not investigate the merits of the case. The authorities substantiating this rule are as follows:

Chin Yow vs. *United States,* 208 U. S. 8;
United States vs. *Williams,* 190 Fed. 897;
Ex parte Lee Kow, 161 Fed. 592;
Ex parte Tong Lock, 163 Fed. 208;
Tan Tung vs. *Edsell,* 223 U. S. 673;
Low Wah Suey vs. *Backus,* 225 U. S. 459.

Was There Some Evidence to Support the Decision of the Secretary of Labor?

To determine if there has been any evidence introduced as to the likelihood of each one of the respective aliens becoming a public charge, each case must be individually investigated. It is necessary that the testimony of each alien be treated separately and not in conjunction with that of his associates, as a whole. The reasons or arguments that may be deduced from the records of each of the twenty-two aliens are set forth as follows:

1. The record in the case of the said alien Bhagat Singh shows that he had moved four times within the last three years, and was then only nineteen years of age. This goes to show that he is very nomadic in his habits, that he has no trade and no training, and is not fit for anything but mere transient labor in agriculture; that he has no relatives in this country, and the fact that although he earned money during his stay in the Philippine Islands, he had less money on leaving Manila than when he went there, shows him to be shiftless. The record also shows that he has no property, that his earning capacity is very small, that he has no particular destination and has insufficient funds to maintain himself for a period pending his getting labor in some work that he might be fitted to perform. His characteristics and standard of living are such that his employment is not desired except in very limited fields. He is susceptible to disease and may have had hookworm, having come from a country where from sixty to eighty

per cent of the laboring classes are afflicted with that disease. He belongs to a class against whom a severe prejudice exists, and by reason of such enmity, coupled with his other disqualifications, his likelihood of permanent employment is very limited and would lead a reasonable person to the conclusion that he is likely to become a public charge.

2. The record in the case of the said alien, Sowan Singh, shows that he is a married man, and having served as a watchman in Hong Kong, worked for a short period as a peddler in Manila. The record does not show that he provided for his wife, and he must necessarily aid in her support as well as maintain himself in this country. His likelihood of obtaining employment as a peddler in this country is very uncertain, and is a precarious business venture because of the license demanded. He is nomadic, has no relatives in this country, and the certificate of the medical examiner of aliens shows that he is afflicted with hookworm, a dangerous contagious disease, and should he be cured of this disease, he would be, according to medical statistics, susceptible to many other dangerous and contagious diseases because of his enervated and debilitated physical condition. The record also shows that on his landing in the Philippine Islands he was compelled to put up a $250 bond conditioned that he would not become a public charge. His qualifications and inexperience are such that his employment could only be of the very lowest type of labor. The fact that he belongs to a class against whom there exists a strong prejudice is a good and sufficient reason for

concluding that his employment would be very limited and on account of his physical debility, he is likely to become a public charge.

3. The record in the case of the said alien, Arjan Singh, shows that he is a married man, having made no provision for his wife in India, and therefore is in duty bound to provide for her support as well as make a living for himself in this country. He has been a soldier and has no particular occupation or trade. For a short time while in Manila, he did some peddling, but states that he does not desire to do any manual labor in this country. However, his qualifications show that that is the only field of labor he can go into and that he has had no experience in any kind of work. The record also shows that he is not honest in his statements, for he denied having put up a bond at the port of Manila, while his certificate shows that a bond of $250 conditioned that he would not become a public charge, was put up for him. The medical examiner's certificate at this port shows that he is suffering with what is known as "arrhythima, or irregular heart action, affecting his ability to earn a living". According to his own statements, he is not fitted for anything but manual labor and yet on account of his condition, such labor is impossible. This fact, coupled with the prejudice against him in this country and the undesirability of his labor, and the fact that he comes from a country from sixty to eighty per cent of the laboring classes of which is afflicted with hookworm, making it likely that he may be af-

flicted with the same disease,—all these facts go to show that he is likely to become a public charge.

4. The record in the case of the said alien, Partab Singh, shows that it was his intention to come to the United States when he left China, and that he spent only fifteen days in Manila waiting for the boat. He claims he did some peddling in Manila. The record shows that he is married, has one child and must aid in their maintenance in India as well as earn a living for himself in this country; that he has no one to help him in this country except a cousin whose address he does not know; that he does not like to work on a farm, yet he is fitted for nothing else; that he has not sufficient means to maintain himself pending his being employed in some labor; that he has money and property in Shanghai but has no documentary or other evidence to prove this assertion. The strong prejudice against this alien, coupled with his characteristics, standard of living, and other disqualifications, and the fact that he comes from a country where from sixty to eighty per cent of the laboring classes are afflicted with hookworm and other contagious diseases, are good and sufficient grounds for believing that he will not be able to get permanent employment in the United States and that he is likely to become a public charge.

5. The record in the case of the said alien, Asa Singh, shows that he has a wife and one child in India; that he left seven months ago without any provision for their maintenance and he must provide for them as well as make a living for himself in this country.

In India he was a farmer; in Hong Kong a watchman at a very small salary. He has no ability in any skilled craft and has only $50 in his possession. His many extravagant statements of property and money in India are without corroboration. He says only as a last resort will he do manual labor, yet he has no ability in any other line. When landed in the Philippine Islands where the standards of living are much lower than in the United States, he was compelled to put up a $250 bond providing against the likelihood of becoming a public charge. He admits that his coming to Manila was a mere subterfuge and that the landing there was only to assist his landing in the United States. His medical certificate shows that he is afflicted with hookworm, and even should he be cured, the statistics and reports of the Rockefeller Institute show that he will be in such a debilitated condition that he will be susceptible to such contagious diseases as typhoid, smallpox and tuberculosis. His inexperience, lack of training and lack of skill in any trade, coupled with his diseased, enervated and debilitated physical condition and the strong prejudice against his employment in this country, militate against his being able to secure work for any extended period and shows that he is likely to become a public charge.

6. The record in the case of the said alien, Sapuran Singh, shows that he is nomadic, having moved four times in the past few years without any particular purpose or intent in his migration. He has but $50 in his possession and his statements show that his earning capacity is very small. His vague statements of prop-

erty in India are not substantiated by any documentary or other evidence. His only employment for a number of years has been that of a night watchman. He stated that for a few days in Manila he peddled clothes. His conduct and his statements show that his only purpose in going to Manila was to aid his landing in the United States. He is not fitted for manual labor. He is now under treatment at Angel Island for the contagious disease of hookworm. This will leave him in an enervated physical condition. The strong prejudice against his employment in this country, coupled with his physical condition, his lack of financial means and inexperience in any manual labor, shows that he is likely to become a public charge.

7. The record in the case of the said alien, Soba Singh, shows that he is very nomadic, having moved four times within two years without any definite or fixed destination; that his wife is in India and he must send her money for her support as well as maintain himself in this country; that he never worked at any hard labor for the past two years; that he has worked as a watchman and a peddler; that he has only $50; that the past two years of inactive life have disqualified him for manual labor. The strong prejudice against him in this country and the fact that he comes from a country where from sixty to eighty per cent of the laboring classes is afflicted with hookworm, militate against him and were all taken into consideration by the immigrant inspector when he determined that this man was likely to become a public charge.

8. The record in the case of the said alien, Sham Singh, shows that he has a child in India whom he must support; that he moves whenever the wanderlust strikes him without any particular objective point; he stated that he did some peddling for a few months in Manila but that "he did not bother to look for work". He has but $50, but makes many statements of money and real property belonging to him in India, but produces no documentary evidence to prove them. He has not sufficient means to support himself while looking for work. The fact that there is a strong prejudice against him would militate aaginst his employment. He comes from a country where more than a majority of the laboring classes are afflicted with hookworm and other contagious diseases. His many physical disqualifications, his lack of training, his insufficient means and the uncertainty of his employment, all tend to prove that he is likely to become a public charge.

9. The record in the case of the said alien, Viryan Singh, shows that he is 36 years of age with no other occupation than that of watchman. He says he will do independent work, but has no idea what kind of work he prefers. He has no destination or objective point to which he intends to go in this country. His own statements show that he is shiftless. Even in the Philippine Islands, where the standard of living is much lower than here in the United States, he was compelled to put up a $250 bond to provide against his becoming a public charge. The strong prejudice against him, his disqualifications, his inexperience and lack of financial means, lead to the natural conclusion

that in this country he is likely to become a public charge.

10. The record in the case of said alien, Sohn Singh, shows that he was a night watchman in China; that he went to Manila with the intent and purpose of coming on to the United States; that he was compelled to put up a $250 bond to provide against his being likely to become a public charge; that he was told not to beg; that he might do farm work. The record also shows that at the present time he is suffering with hookworm and even should he be cured, he would be in such an enervated and weakened condition that, according to statistics, he would be susceptible to the contagious diseases consumption, typhoid and smallpox. He has only $50 and no documentary evidence of any other property. This is insufficient to maintain him pending his finding any employment that he might be able to do. These physical disqualifications, when considered with the strong prejudice against his employment and residence in this country, are strong considerations in arriving at the conclusion that he is likely to become a public charge.

11. The record in the case of the said alien, Naron Singh, shows that he is 32 years of age; that for the past four years he has worked as a night watchman; that he has never peddled; that he stayed in Manila only two weeks. The natural inference is that he used the Philippine Islands as a stepping stone to enter the United States. He states that he intends to go into business but has only $50. His vague and unbelievable statements of property in India cannot be

given credence. He states that he could do farm labor but even though he knows something of farm work in India, his experience would not be such as would fit him for farm work in this country. The fact that he has a wife to provide for in India makes an added burden to the maintenance of himself in this country. He is not even properly fitted for the most menial work. The strong prejudice against him in this country makes it certain that his employment will be only for temporary periods. This, together with his lack of education, and the fact that he comes from a country where from 60 to 80 per cent of the laboring classes have hookworm, leads one to the natural conclusion that he is a person who is likely to become a public charge.

12. The record in the case of Gulam Nabi shows that he is 27 years old; that he went to Manila with the intention of effecting a landing there so that he might the more easily get into the United States; that he was in the United States seven years ago. He has no substantial evidence to corroborate this statement. He says he has a wife in India and a child eight years old. He makes no mention of any particular vocation or fixed trade. He comes from a country where from sixty to eighty per cent of the people are afflicted with hookworm and many other dangerous and contagious diseases. He has only $50 and no certainty of employment. The fact that a strong prejudice exists against him in this country, together with his many disqualifications, would lead one to believe that he is a person who is likely to become a public charge.

13. The record in the case of the said alien, Sundar Singh, shows that he left India about four years ago and since then has worked as a policeman or watchman in China; that he had a store in Shanghai; that he spent seventeen days in Manila; that he has money in Shanghai. His statements are without corroboration. The certificate of the medical examiner of aliens shows that he is afflicted with hookworm. Even should he be cured, statistics show that he would be in such an enervated and debilitated condition that he would be susceptible to other contagious diseases. The indolent and inactive life he has led for the past four years has not fitted him for any manual labor. The strong prejudice against him, his financial condition and his weakened physical condition should be strong reasons for excluding him from the United States on the ground that he is likely to become a public charge.

14. The record in the case of the said alien, Naron Singh, shows that for three years after leaving India he served as a night watchman in Shanghai; that his going to Manila was only to effect his entrance into the United States; that he has money in India. He produces no documentary or other evidence to substantiate this fact. He states that he will do work if he gets it, but is rather indifferent as to getting employment. He is absolutely unskilled in any special line of work and can only do the roughest manual labor. The fact that he comes from a country where hookworm is so prevalent makes it probable that he may become afflicted with contagious diseases. These many disqualifications, coupled with his financial ina-

bility and the strong prejudice against his employment in this country, led to the natural conclusion that at the time of his entrance in the United States he was a person who was likely to become a public charge.

15. The record in the case of the said alien, Bashan Singh, shows that he was a farmer in India and for a time served as a soldier in the British Army. For over five years he was employed as a policeman or a sort of a night watchman in Shanghai, and during the month he spent in Manila he peddled clothes but without much success. He has only $55 in cash, but makes many uncorroborated statements of wealth which he has in hiding in Shanghai. His statement that he will do farm labor does not prove that he is capable of such work for his life as a soldier and night watchman has not fitted him for the lowest and meanest of physical labor. His disqualifications, physical and financial, coupled with the prejudice against him, would lead to the conclusion that his employment here would be very temporary and that he is such a person as is likely to become a public charge.

16. The record in the case of the said alien, Foman Singh, shows that he has been away from India for about two years, having served as a night watchman in Shanghai most of the time, and is not qualified to do any real physical labor. He claims he peddled clothes in Manila. The fact that he remained only one month in Manila shows that he was using the Philippine Islands as a stepping stone to the United States. The $50 which he produces is of

the same amount as that of most of his associates and his statements of having more money in China cannot be given credence, according to the immigration rules, unless he has some foundation for such claims. He has no trade and has never been engaged within the last few years in any productive labor, yet he states that he could do farm work. A certificate of the medical examiner at this port shows that he is suffering from the disease of scabies and is being held for treatment. His lack of experience, his diseased body, and the prejudices against giving him employment in this country, all tend to show that at the time of his entry into the United States he was such a person who was likely to become a public charge.

17. The record in the case of the said alien, Jagat Singh, shows that for five years and three months he worked as a night watchman in Shanghai, but has never been employed in any trade or work of a skilled artisan. The fact that he was only 15 days in the Philippines shows that he was there merely for the purpose of effecting a landing in the United States. He produces $155, but does not make the statements of his associates of the untold wealth that he has in India. His wife in that country must be supported, and this is a reason considered by the immigrant inspector in arriving at his conclusion. The fact that he is without any skill in any work, and his life for more than five years has been inactive, shows that he is not even physically fitted to do manual labor. The strong prejudice against giving him employment in this country, coupled with his

lack of skill and financial disability, proves conclusively that at the time of his entry into the United States he was likely to become a public charge.

18. The record in the case of the said alien, Jamit Singh, shows that he has no trade, that he cannot do farm labor. It would be a natural conclusion that a night watchman would have but a poor knowledge of farm work. He knows no skilled trade. He has but $50 and states that he has no other possession anywhere. He is diseased, being afflicted with stomatitis. Without training, and being ill with an enervating disease, he has a poor chance for doing work in this country. This, together with the fact that there is a strong prejudice against giving him employment in this country, leads one to the natural conclusion that at the time of his entry into the United States he was a person likely to become a public charge.

19. The record in the case of the said alien, Mada Ram, shows that he stayed one month in Hong Kong and one month in Manila prior to his coming to the United States. He states that he had a shop in India and that during the time he was in Manila he did some peddling. He has $60 and makes some very vague statements of the property he owns in India. His statements are uncorroborated. His lack of finances certainly makes it impossible for him to establish a shop in this country to compete with American shops. His lack of experience in any line of labor, and the strong prejudice against him in this

country, make it very probable that he is likely to became a public charge.

20. The record in the case of the said alien Ferroz Khan shows that he left India one year ago and spent most of the time prior to coming to the United States in Manila. He states that he was a watchman there. He claims to have been a farmer in India and that he owns property there but has absolutely no corroboration. Forty-five dollars is all he possesses and that is insufficient to sustain him until he is able to obtain employment. On his entry into the Philippines he was compelled to put up a bond of $250 to provide against his becoming a public charge. He has no trade and no training in any line of work. The prejudice against him, his susceptibility to diseases which are very prevalent among his associates, lead to the conclusion that he is likely to become a public charge in this country.

21. The record in the case of the said alien Mahbub Ali shows that he left India about a year ago; that he is 19 years of age; that he has never done any work but has been going to school; that on arriving at Manila it was his intention to attend school there. While there he was not working at any employment that brought him any pay, but worked for his board at some livery stable. He stated that he had a certificate to admit him into the schools of this country, but when asked to produce it stated that upon presenting it to the superintendent of the schools in Manila it became lost and was not returned to him. He has only $40 and his assertion that his father in

India will support him here is without any foundation. The medical examiner's certificate here shows that he is suffering with granular conjunctivitis which would disqualify him as a student. He has never had any experience at work and has never earned a livelihood. The discrepancy in his statement regarding his status as a student, coupled with his financial disqualifications and his physical disability, would lead one to the natural conclusion that at the time of entry into this country he was likely to become a public charge.

22. The record in the case of the said alien Abdoolah Khan shows that he is 35 years of age; that in India he was a farmer, owning the property which he worked, but makes no attempt to substantiate this with any documentary evidence. He spent about five months in Hong Kong and a short period in Manila. At neither place did he attempt to do any work. At Manila he was compelled to put up a bond providing for the possibility of becoming a public charge. He has only $50, has no skill in any line of work and even if physically able could only do the crudest manual labor. His many disqualifications would naturally lead one to believe that at the time of his entry in this country he was a person likely to become a public charge.

The testimony of the twenty-two aliens, when viewed as a whole, shows conclusively that there was concerted action or a sort of conspiracy to evade the immigration laws by first going to the Philippine Islands, remaining there for a very limited period,

and, having acquired a residence there, then proceeding to the mainland. Although some denied that their original intention in going to Manila was to come to the mainland, nevertheless their actions belied their words. In considering their financial qualifications as a whole, it will be seen that fully seventy-five per cent had just fifty dollars in gold.

The statements of eighty per cent are to the effect that they were night watchmen in China for a number of years and then for a few days peddled goods in Manila. It seems absurd that so many night watchmen are needed in China, especially of the Hindu race. There is no means of disproving the statements of the twenty-two aliens without going to China or the Philippine Islands to get testimony in refutation. Considering their testimony as a whole, it is evident to any one perusing the same that they had carefully arranged a story or a set of statements which they believed would carry the greatest weight with the immigration officials in judging as to their right to land in the United States.

Do the Authorities on the Question of Abuse of Discretion Support the Evidence in These Cases?

The local immigration officials who saw and personally inspected the twenty-two aliens being familiar with the condition of alien Hindu laborers already in the United States were able from their accumulation of official experience and departmental knowledge to come to the conclusion whether or not these particular twenty-two aliens, each considered individually, were likely to become public charges.

In the case of *Tang Tun* vs. *Edsell,* 223 U. S. 672, it is stated:

> "The acts of August 18, 1894, chap. 301 (28 Stat. at L. 327, 390, U. S. Comp. Stat. 1901, p. 1303) and of February 14, 1903, chap. 552 (32 Stat. at L. 825, 828, U. S. Comp. Stat. Supp. 1909, p. 87), make the decision of the appropriate immigration officer final unless reversed on appeal to the Secretary of Commerce and Labor. *And if it does not affirmatively appear that the executive officers have acted in some unlawful or improper way and abused their discretion,* their finding upon the question of citizenship must be deemed to be conclusive, and is not subject to review by the court."

Judge Dooling in his opinion in this case in the Court below, 209 Fed. 700, said:

> "But let there be no delusion that this power, once conceded, can be used only in the case of Hindus. It is equally applicable to every other race. Conceding the power to the Department of Labor to exclude the Hindu laborer for this reason, we *must concede to it the power to exclude, for the same reason, the laborer of any other race."*

That the immigration officials are not merely expelling and excluding those of only the Hindu race, but the members of any race, is most emphatically shown in the case of *White* vs. *Greggory,* 213 Fed. 768, Circuit Court of Appeals for Ninth Circuit, decided May 18, 1914. In that case a number of Russian aliens applied for admission to Seattle, Washington, and were denied admission on grounds that they were likely to become public charges. Upon peti-

tioning to the District Court they were discharged upon a writ of *habeas corpus.* (210 Fed. 680.) In rendering the opinion on the appeal to this Court, Judge Morrow reversed the District Court. After quoting with approval *Ekiu* vs. *U. S.,* 142 U. S. 651, the opinion concludes as follows:

> "In the present case the executive officers found that the aliens were persons likely to become a public charge. This is a ground of exclusion provided by law. In reaching this conclusion the officers gave the aliens the hearing provided by the statute. This is as far as the court can go in examining such proceedings. It will not inquire into the sufficiency of probative facts, or consider the reasons for the conclusion reached by the officers. As said by the Supreme Court:
>
> "'Unless and until it is proved to the satisfaction of the judge that a hearing, properly so called, was denied, the merits of the case are not open, and, we may add, the denial of a hearing cannot be established by proving that the decision was wrong.' *Chin Yow* v. *United States,* 208 U. S. 8, 13, 28 Sup. Ct. 201, (52 L. Ed. 369).
>
> "The order and judgment of the court below are reversed, with instructions to dismiss the writ of *habeas corpus.*"

The recent case of *United States* vs. *Uhl,* decided by the Circuit Court of Appeals, Second Circuit, May 14, 1914, 215 Fed. 573, also involves a group of aliens who were excluded from the United States on the ground that they were likely to become public charges. In that case fourteen Russian aliens applied for admission at New York City, claiming their destina-

tion as Portland, Oregon. The District Court declined to grant writs of *habeas corpus,* 211 Fed. 236, and on an appeal to the Circuit Court of Appeals this decision was sustained. In commenting on the powers of the immigration officials, Circuit Judge Coxe said:

> "The board was also enabled from information derived from the press and other sources to determine the likelihood of the relators securing employment when they reached Portland and was justified in finding that conditions there were such that the chance of employment was most unlikely. It is true that information in this form would not be permitted in a court of law, but the immigration officers cannot delay these proceedings indefinitely. They cannot summon witnesses from the Pacific states or send commissions there. If they were satisfied from information received that there was no market in Portland for such services as these relators could render, they were justified in acting upon such information, just as they would be if satisfied from reports in the press or from any reliable source that Portland had been destroyed by flood or fire or that an epidemic of cholera was raging there. Congress has placed the determination of these questions in the hands of trained officials and their conclusions upon disputed questions of fact are final and conclusive. It is only in the very rare instance that a finding is without any proof to support it that the courts may interfere.
>
> "We think these views are sustained by the following authorities: *Nishimura Ekiu* v. *United States,* 142 U. S. 651, 12 Sup. Ct. 336, 35 L. Ed. 1146; *Lee Lung* v. *Patterson,* 186 U. S. 168, 22 Sup. Ct. 795, 46 L. Ed. 1108; *Lem Moon Sing* v. *U. S.,* 158 U. S. 538, 15 Sup. Ct. 967, 39 L. Ed. 1082; *U. S.* v. *Ju Toy,* 198 U. S. 253,

25 Sup. Ct. 644, 49 L. Ed. 1040; *Low Wash Suey* v. *Backus,* 225 U. S. 460, 32 Sup. Ct. 734, 56 L. Ed. 1165.

"The order dismissing the writ is affirmed."

In *Ex parte Marshall,* 213 Fed. 123, Judge Dooling reaffirmed his opinion rendered in this case now before this Court. *Ex parte Marshall* was a hearing on seven petitions for writs of *habeas corpus* of thirty-four Hindus who applied for admission at San Francisco, having first landed in the Philippine Islands. That case is identical with the case at bar and it is cited without further comment.

United States vs. *Williams,* 190 Fed. 897, is a case on the question of deportation on the ground of an alien's likelihood of becoming a public charge. It is there stated:

"As to the first of these propositions, the board had before it the certificate of the examining surgeons that Thomas Buccino was undersized, and 'had varicose veins of the left leg which affects his ability to earn a living.' Moreover, the alien was present in person, and they had opportunity during the examination which they conducted to form an opinion as to his physical and mental qualifications for earning a livelihood. Ever since the decision of the Supreme Court in *Nishimura Ekiu* v. *United States,* 142 U. S. 651, 12 Sup. Ct. 336, 35 L. Ed. 1146, it has, so far as I know, been held in this circuit that if the board of inspectors had the alien before them so that they might themselves inspect and examine him, there was sufficient before them *to warrant his exclusion on the ground that he was liable to become a public charge if in their discretion they reached such a conclusion.*"

The case of *Ex parte Lee Kow,* 161 Fed. 592, is in accord with the cases just cited:

> "This court cannot grant a writ and in effect reverse and set aside the decision of the inspector and department on the ground it may think there was *sufficient evidence to warrant a decision the other way, or that there was a preponderance of evidence in favor of the petitioner.* See cases cited. When a question of fact is presented for the decision of these *quasi*-judicial officers, and that question is honestly passed upon, it is final and conclusive on the courts if a full opportunity to be heard was given."
>
> *U. S.* vs. *Greenwalt,* 213 Fed. 901.

C.

The Interpretation of the Immigration Laws in the Expulsion of Aliens.

Under this heading may be discussed the points contended for by counsel for aliens on page 13 of their brief, from which the following is quoted:

> "And, in this respect, attention is directed to the distinction that must be drawn between the *exclusion* of an alien applying for admission, and the *expulsion* of an alien received and welcomed under the strict and proper enforcement of the immigration laws."

From this statement it is inferred that counsel mean:

I. That *expulsion* (not exclusion) of aliens *likely* to become public charges is not within the interpretation of sections 2, 20 and 21 of the immigration laws;

II. That the promulgation of rule 14 by the Commissioner-General of Immigration was in excess of the power conferred upon him by section 22 of the immigration laws.

Under the first subdivision may be discussed what counsel for aliens have considered a new and novel point of law in distinguishing between *exclusion* of aliens and the *expulsion* of aliens.

It can be agreed at the outset that in this case we are not dealing with the *exclusion* proceedings, but are involved in *expulsion*. The distinction between the two terms, although partly self-explanatory, may be simply explained by stating that an exclusion proceeding refers to the debarment of an alien who is seeking admission, the alien being at that time in the custody of the immigration officials. In such a case there is no warrant of arrest emanating from the Secretary of Labor. *Expulsion* refers to the deportation of an alien who has in any manner gained entrance into the United States, whether rightfully or mistakenly, and in violation of law. The custody in the latter case can only be acquired by a warrant of arrest from the Secretary of Labor, and when the record is sent up to the Secretary of Labor it is his prerogative either to cancel the warrant of arrest, or issue a warrant of deportation and have the alien *expelled* from the United States. Then it is expulsion with which we are concerned in these cases, since the aliens are in the United States, having presented certificates of landing on American soil, namely, the Philippine Islands.

From page 10 of counsel's printed brief the following statement is quoted:

> "If the public charge theory were worthy of consideration the circumstances of the cases of these twenty-two Hindus clearly raise them out of that class, as nowhere has it even been suggested that these Hindus, or any of them, ever was a public charge, anywhere in the world."

Reasoning from this counsel would have the Court rule that sections 20 and 21 can only be used for the *expulsion* of public charge aliens where these aliens have actually *become* public charges within three years, but that those *likely* to become public charges cannot be expelled or sent out of the country by virtue of sections 20 and 21. In a word, the petitioner's contention is that sections 20 and 21 have no application whatsoever to the *expulsion* of *likely* to become public charge aliens, but only the expulsion of those who are *actually* public charges within three years. With this limited construction of the law the government cannot agree in interpreting that the law shall be used for *expulsion* in the one case but not in the other.

In supporting the contention of the government two questions must be answered: (a) What is meant by "in violation of law" in section 20 and "in violation of this Act" as set forth in section 21; and (b) Must the immigration officials wait until the landed alien has *actually* become a public charge before beginning expulsion proceedings?

(a) What is Meant by "In Violation of Law" and "In Violation of This Act?"

In violation of law does not mean that the alien is charged with any crime or that he is being prosecuted for any offense. It simply means that his characteristics are such that he is of a type which places him in one of the *excludable* classes established by section 2 or any other of the immigration laws. If the alien was admitted or landed yesterday and today the immigration officials discover that they have made a mistake, then they may cause the alien to be arrested for the purpose of rectifying that mistake. If the alien has entered through an error of judgment and it is subsequently learned that he is *likely* to become a public charge and was so at the time of entry, he is just as clearly within the country in violation of law or in violation of this Act and is just as clearly subject to *expulsion* as are the insane, the tuberculous or any other of the excludable classes in section 2.

In those cases in which the *expulsion* of an alien is contemplated on the ground that he is likely to become a public charge, it is invariably shown that upon the admission or primary inspection the alien has either expressly misrepresented himself or he has failed to disclose certain material facts which, if known, would have necessitated exclusion. An alien may gain admisssion on primary inspection who at the time of entry gave no indication that he was a person likely ever to become a public charge and who may immediately after engage in practices which dis-

close latent possibilities existing at the time he entered which, if known, would have placed him in the class likely to become public charges under section 2. Those possibilities may be found in his profligacy, indolence, criminal tendency, physical conduct, moral degeneracy or mental deficiencies. It follows then that if the material facts discovered subsequent to admission of the alien who has gained such admission under color of right, whose condition, tendencies, constitutional inclinations or habits indicate upon such subsequent investigation that at the time of entry he had these defects but that they were latent and concealed, such mistake on the part of the immigration officials may be rectified in an arrest proceeding for expulsion.

The question naturally arises, is there no finality in the decision of the immigration officials? Is not the landing of an alien by the immigration officials *res adjudicata?* Where is this authority for the rectifying of mistakes and errors of judgment? The courts have a unique and rather one-sided view in the matter of such reviews of judgment. It may be stated that where the immigration ruling has been *favorable* to the alien it is subject to recall and reconsideration, but where *adverse* to the alien the decision is *final.*

The court decisions are supported by the immigration laws in this rule of reconsideration and finality. Section 24 in defining the powers of immigration inspectors has this provision:

> "The decision of any such officer if *favorable* to the admission of an alien, shall be subject to *challenge* by any other immigration officer."

Section 25, in defining the powers of boards of special inquiry, concludes with this statement:

> "That in every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if *adverse* to the admission of such alien, shall be *final,* unless reversed on appeal to the Secretary of Labor."

Judge Gilbert, in deciding the case of *Lee Quen Wo* vs. *United States,* 184 Fed. 685, at page 688, which came up before this Court, made the following comment:

> "It is urged that the order of the commissioner of immigration admitting the appellant into the United States estops the government to deny the legality of his entry, and constitutes a bar to this proceeding, and reference is made to the language of the opinion in *Chin Yow* v. *United States,* 208 U. S. 8, 28 Sup. Ct. 201, 52 L. Ed. 369, in which the court *sustained the finality* of the decision of the immigration officers upon a hearing concerning the right of a Chinese to land in the United States, and said that thereafter the merits of the case were not open. But that case, and other decisions of the Supreme Court, go no further than to hold that the right of a Chinese applying for admission into the United States is determinable by the proper immigration authorities, that their decision when *adverse* to the applicant, and the hearing has been properly had, and the applicant's remedy has been exhausted upon an appeal to the Secretary of Commerce and Labor, is *final,* and there is no right of recourse to the courts. The court in so holding gave effect to the statute of August 18, 1894 (Aug. 18, 1894, c. 301, 28 Stat.

> 390), which provides that the decision of the appropriate immigration or customs officers, if *adverse* to the admission of such alien, shall be *final* unless reversed on appeal to the Secretary of the Treasury. There is no statutory provision that the decision, if *favorable* to the applicant for admission, shall be *final.* The decisions have been to the contrary. *United States* v. *Lau Sun Ho* (D. C.), 85 Fed. 422, and cases there cited; *Mar Bing Guey* v. *United States* (D. C.), 97 Fed. 576."

The courts have decided in two very clear-cut opinions that the immigration officials may arrest and *expel* aliens whom they had mistakenly admitted and who were members of the *excludable* classes at the time of entry. These cases, *Pearson* vs. *Williams,* 202 U. S. 281, and *The Japanese Immigrant Case,* 189 U. S. 87, held that the decisions admitting or landing aliens are not matters *res adjudicata* and are subject to reversal upon a hearing to correct errors of judgment. See also *United States* vs. *Williams,* 175 Fed. 275.

(b) Must the Immigration Officials Wait Until the Alien Has Actually Become a Public Charge?

The provision of section 20 which states "and such as become public charges from causes existing prior to landing" is the basis for the petitioner's contention that the law does not authorize or empower *expulsion* until the alien has gone beyond the stage of likelihood.

Can it be conceived that the apparent intent of Congress should be defeated because in making such

provision in section 20 it did not specifically mention the class of those *likely* to become. All the sections of this Act must be read together, not merely sections 2, 20 and 21, but all from and including 1 to section 25 of the entire act. In section 21 there is a provision as follows:

> "In violation of this Act" (meaning the act as a whole) "or *any* law of the United States."

Is it not clearly a violation of this *Act* or *any* law if an *excludable* alien, namely, one likely to become a public charge under section 2, has been mistakenly and through manifest error permitted to land in the United States, to say that an alien who was likely to become a public charge at the time of entry cannot be deported merely because he has not yet *become* such, and because if he had, or should within three years, he can be deported on that ground alone, seems to be a refinement of reasoning not justifiable in construing and applying remedial statutes such as the immigration laws. It is only by reasoning along lines similar to the foregoing that a meaning can be assigned each provision of sections 20 and 21. As a matter of fact, said sections were not new legislation when they were enacted so far as they contemplated the *expulsion* of aliens on the ground that they were likely to become public charges at the time of entry, but were merely a re-enactment of already existing legislation and the placing of the law in more emphatic form than it had previously stood. When the Act of 1907 was passed the practice of arresting and

expelling aliens on this ground had been continued for some time. This practice had prevailed in cases in which aliens deemed likely to become public charges were arrested soon after being landed even before the passage of the Act of 1903. This last assertion is supported by no less evidence than the statement of facts in the *Japanese Immigrant Case,* 189 U. S. 86-87, which related to a Japanese woman arrested in 1901 after she had entered the country, one of the charges against her being "likely to become a public charge". In that case the action of the administrative officers was upheld by the Supreme Court and the decision has repeatedly been cited since in support of numerous propositions arising under this phase of the immigration law.

The Acting Commissioner-General in an opinion rendered recently in discussing this point, said:

> "Unless the statute is given the construction above contended for, a considerable nullification of its provisions would result—a large class of aliens that the law clearly intends shall not be permitted to enter or remain could not be removed, and after staying for three years could become public charges and still be immune from expulsion although their maintenance would be a public burden. To state an extreme, but by no means impossible illustration: Suppose an alien is admitted today, the inspector or the Board concluding that he is admissible, and tomorrow there should be brought to the Secretary's attention evidence clearly indicating that such alien was all the while likely to become a public charge; must the Secretary wait, possibly almost three years, for his conclusion to be borne out by the alien's *actually becoming a*

public charge, before he can start proceedings for his removal, and lose the right to remove if he does not become such until the three years have expired? The mere statement of this suppositious case reduces the contention to such an absurdity as not to be countenanced in construing a statute of police and public security like the immigration law, which by all canons of construction is to be construed liberally to effect its purpose. (*Japanese Immigrant Case,* 189 U. S. 96, 97.)"

II. Was the Promulgation of Rule 14 by the Commissioner-General of Immigration in Excess of the Power Conferred Upon Him by Section 22?

In discussing this heading it may be considered from two phases, (a) Does section 22 confer such power upon the Commissioner-General; and (b) Does rule 14 regulate the movements in the United States of aliens once landed?

(a) Does Section 22 Confer Power Upon the Commissioner-General to Make Rule 14?

Section 22 contains a statement, among other provisions, that:

> "He shall establish such rules * * * as he shall deem best calculated for carrying out the provisions of this act."

This seems to give the Commissioner-General unlimited power to act within his discretion. Rule 14 is merely used for assistance and advice in determining the manner of procedure for enforcing the provisions already set forth in sections 20 and 21. Wherein does rule 14 contravene any of the terms of sec-

tions 20 and 21? Is it not an explanation of those sections? Rule 14 then is really superfluous for the immigration laws had already provided adequate means for the expulsion of aliens.

The only reason that can be ascertained for its existence is the fact that certain steamship companies advertised throughout the Philippine Islands and parts of Asia cheap rates of transportation for immigrants going to the United States. It is understood that rule 14 was promulgated to intercept this immigration and put the transportation companies upon notice that aliens coming to the United States in *violation of law* must be returned to the country from which they came at the company's expense, in accordance with section 19 of the immigration laws. Rule 14 may have had such a preventive effect.

(b) Does Rule 14 Restrict the Movements of Aliens Once Landed in the United States?

The contention of counsel for the aliens is that rule 14 provides for the landing of the aliens upon a condition or contingency, in the insular territories of the United States. The statement of their views may be found on pages 14 and 15 of their brief:

> "This means that if twenty-two coal miners from Newcastle were to be admitted at the Port of New York under the proper administration of the immigration laws and were to go to the coal fields of Pennsylvania, they would remain undisturbed so long as they remained in the coal fields as miners, but, if they were to depart from New York and sail to the Port of New Orleans,

they could be expelled from the United States on the same reasoning, * * *"

With this statement the government cannot agree. It has been clearly demonstrated that aliens were using the Philippine Islands as a stepping stone to the mainland of the United States. Rule 14 was simply to give notice that aliens applying at Manila for admission where the immigration inspection, supervised by the War Department, might be more or less lax, and being there given the landing certificate, could not expect that such certificate would be an "open sesame" into the United States if they concealed certain facts in Manila, or if the examination was so cursory as not to discover at that time that the alien had all the demerits to qualify him for the class likely to become a public charge. Rule 14 does not say to the alien "You may stay in the Philippine Islands, but if you go to the mainland you will have to prove that you are not a person likely to become a public charge". The rule simply provides that if the alien *does* go to the mainland and the immigration officials there learn that at Manila there was an error of judgment, in that at the time of entry at Manila he was likely to become a public charge if he went to the mainland, the mere fact of his having traveled to the mainland should not be a bar to expulsion proceedings.

Suppose a Jew is landed today in New York and given a certificate and tomorrow he goes to Boston. There was no law preventing his *going* to Boston, but if he does *go* and it is at Boston that it is discov-

ered that the New York immigration officials committed an error of judgment, then he may be apprehended and the mistake rectified.

Take the example of an alien who might be landed at Vancouver, Wash., last week, upon the representation that he was going to work there in the mills, whereas in truth he intended to go to San Francisco where he had no employment and that he did go there. Suppose it were further shown that there were 7,000 men who were virtually public charges in San Francisco and that this alien was likely to become one of that number. Would not these facts when brought to light by a subsequent investigation by immigration officials in San Francisco show that considering all the circumstances surrounding the condition of the alien, he was a person likely to become a public charge at the time he entered Vancouver, Wash.? There is no attempt to *control the movements* of the alien, but if his determined destination, connected with other circumstances, is a material fact making up the alien's status, and such material fact has been concealed, he may subsequently be found to have been likely to become a public charge at the time of entrance.

V.

The government submits:

(1) That the hearings of the respective aliens before the immigration officials and the Secretary of Labor have indisputably been regular, open and fair. This alone upon the authority of the many court deci-

sions on the point of fairness should be sufficient to sustain the ruling of the Court below.

(2) There has not only been *some* evidence, but there has been ample and sufficient evidence. Each case was carefully dealt with separately. There has been no abuse of discretion in the departmental rulings based upon the evidence provided.

(3) In the matter of the interpretation of the laws in providing for the *expulsion* of aliens once landed who are likely to become public charges, it will be seen that the long-established rulings of the Department of Immigration have already determined the definition and the scope of those laws. The many clear decisions of the Federal Courts have for years sustained the departmental rulings.

Respectfully submitted,

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